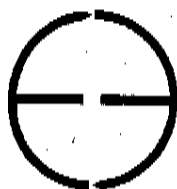


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California Council for Environmental and Economic Balance

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May 21, 2004

The Honorable Terry Tamminen
Secretary
California Environmental
Protection Agency
1001 I Street, 25th Floor
Sacramento, CA 95814

Re: CCEEB's Comments regarding the April 23, 2004 Staff
Proposal: Recommendations for the Development of an
Intra-agency Environmental Justice Strategy

Dear Secretary Tamminen:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor and public leaders that strives to advance collaborative strategies that protect public health and the environment while allowing California's economy to grow. CCEEB was an active participant in the development of SB 89 (Escutia, 2000). CCEEB supported the final version of that bill which established the environmental justice strategy and gap identification requirements and the Interagency Working Group (the "IWG") and the Advisory Committee on Environmental Justice (the "Advisory Committee"). CCEEB's General Counsel, Cindy Tuck, is a member of the Advisory Committee. Attached are CCEEB's comments regarding the April 23, 2004 Staff proposal entitled: Recommendations for the Development of an Intra-agency Environmental Justice Strategy (the "Draft Proposal"). Attachment 1 is an overview (list) of CCEEB's comments. Attachment 2 is the complete text of CCEEB's comments.

CCEEB appreciates Cal/EPA's and the IWG's consideration of these comments. If you have any questions, or if you would like to discuss the comments, please contact me at (415) 512-7890 or Cindy Tuck at (916) 442-4249.

Sincerely,

VICTOR WEISSER
President

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The Honorable Terry Tamminen
May 21, 2004
Page 2

Attachments (2)

cc: Members, Interagency Working Group:

The Honorable Arthur Baggett, Jr., Chair, SWRCB

The Honorable Joan Denton, Ph.D., Director, OEHHA

The Honorable Paul Helliker, Director, DPR

The Honorable Alan C. Lloyd, Ph.D., Chair, ARB

The Honorable Edwin Lowry, Director, DTSC

The Honorable Linda Moulton-Patterson, Chair, IWMB

Ms. Jan Boel, Acting Director, OPR

Mr. James Branham, Cal/EPA

Ms. Tam Doduc, Cal/EPA

Ms. Maureen Gorsen, Cal/EPA

Ms. Celeste Cantu, SWRCB

Mr. Mark Leary, IWMB

Ms. Catherine Witherspoon, ARB

Ms. Margie Walker, OPR

Mr. Jackson Gualco

Ms. Cindy Tuck

ATTACHMENT 1**OVERVIEW**

**CCEEB'S MAY 21, 2004 COMMENTS REGARDING THE
DRAFT RECOMMENDATIONS FOR THE DEVELOPMENT OF AN
INTRA-AGENCY ENVIRONMENTAL JUSTICE STRATEGY (4/23/04 Version)**

- 1 - **APPROACH:** CCEEB concurs with the approach of having the strategy being an overarching strategy with broad concepts and themes.
- 2 - **PURPOSE:** The proposed stated purpose of the strategy should be modified to reflect the purpose established by the Legislature.
- 3 - **UNCLEAR TERMS:** There are terms in the document that are different from the terms in the SB 89 statute and are unclear and problematic.
- 4 - **SB 89 GAP IDENTIFICATION CRITERIA:** CCEEB urges the IWG to:
 - A) include criteria for each goal;
 - B) state the criteria as tests for identifying and addressing gaps (i.e., as questions);
 - C) consider the meaning of "environmental justice problem" in the context of applying the criteria in the gap identification process; and
 - D) modify the suggested language.
- 5 - **STATUTE:** CCEEB supports Staff's inclusion of the IWG's statutory requirements in the Draft Proposal.
- 6 - **STUDIES:** The addition of information regarding which environmental justice studies the IWG has reviewed would be helpful.
- 7 - **CORRECTION:** The date for the Advisory Committee's report needs to be changed to October 7, 2003.
- 8 - **VISION:** It is appropriate to include a vision statement. CCEEB suggests an alternative statement in order to address the concerns in Comment 3 regarding unclear terms.
- 9 - **MISSION STATEMENT:** CCEEB suggests an alternative mission statement in order to address the concerns in Comment 3 regarding unclear terms.
- 10 - **VALUES:** CCEEB suggests that Cal/EPA include in the environmental justice values section the values of "good science" and "regulatory certainty."
- 11 - **GOALS:** CCEEB supports inclusion of the four proposed goals.
- 12 - **PRECAUTION:** CCEEB supports the use of the term "precautionary approach."
- 13 - **CUMULATIVE IMPACTS TOOLS:** CCEEB suggests clarification of the objective regarding tools to assess cumulative impacts.
- 14 - **JOBS AND BUSINESS CLIMATE:** What is missing from the document is an acknowledgment that the development of solutions to environmental justice problems needs to take into account impacts on the creation and retention of jobs and business climate.

ATTACHMENT 2**CALIFORNIA COUNCIL FOR ENVIRONMENTAL AND
ECONOMIC BALANCE****DRAFT STAFF PROPOSAL:
CAL/EPA INTERAGENCY WORKING GROUP ON
ENVIRONMENTAL JUSTICE
RECOMMENDATIONS FOR THE DEVELOPMENT OF AN
INTRA-AGENCY ENVIRONMENTAL JUSTICE STRATEGY
(4/23/04 Version)
Comments Submitted May 21, 2004**

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor and public leaders that strives to advance collaborative strategies that protect public health and the environment while allowing California's economy to grow. CCEEB was an active participant in the development of SB 89 (Escutia, 2000). CCEEB supported the final version of that bill which established the environmental justice strategy and gap identification requirements and the Interagency Working Group ("the IWG") and Advisory Committee on Environmental Justice (the "Advisory Committee"). CCEEB's General Counsel, Cindy Tuck, is a member of the Advisory Committee. Following are CCEEB's comments regarding the April 23, 2004 Staff proposal entitled: Recommendations for the Development of an Intra-agency Environmental Justice Strategy (the "Draft Proposal").

1. GENERAL COMMENTS

Comment 1 – APPROACH: CCEEB concurs with the approach of having the strategy being an overarching strategy with broad concepts and themes.

In the Draft Proposal, Staff is suggesting an overarching strategy, with broad concepts and themes to guide Cal/EPA in addressing environmental justice. CCEEB concurs with this approach. We note that statute (California Public Resources Code section 71113) provides that the purpose of the strategy is for "identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice." We have developed the specific comments below with that statutory purpose in mind.

CCEEB understands that Cal/EPA intends to move forward with other actions related to environmental justice concurrently with the strategy development and implementation process, and we will comment on those other actions in the associated public processes.

The Draft Proposal builds on the areas where the Advisory Committee reached consensus. The document appropriately reflects a strong commitment to environmental

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justice and has many positive aspects. CCEEB offers the more specific comments below as suggestions for improving the document.

2. SPECIFIC COMMENTS

Comment 2 – PURPOSE: The proposed stated purpose of the strategy should be modified to reflect the purpose established by the Legislature. [Page 1.]

The proposed second paragraph of Page 1 is included as a general statement for why the IWG has developed the recommendations. The draft would state:

Pursuant to section (§) 71113 of the Public Resources Code (PRC), the IWG has developed recommendations to the Secretary of Cal/EPA on how the Agency should integrate environmental justice into its public health and environmental protection programs, policies and activities to assure that all Californians obtain **equal and full protection**, fair treatment, and **full access in a clean, healthy environment**. [Emphasis added.]

We note that subdivision (a) of Section 71113 (from SB 89, Escutia, 2000) sets forth the purpose of the strategy and the IWG's focus:

71113. (a) (...) the Secretary shall convene a Working Group on Environmental Justice to assist the California Protection Agency in developing (...) an agencywide strategy **for identifying and addressing any gaps in existing programs, policies or activities that may impede the achievement of environmental justice.**

We suggest that the second paragraph be changed to reflect the statutory purpose for the strategy and the State's definition of "environmental justice" (at Government Code Section 65040.12. CCEEB suggests that following language replace the Staff's draft language quoted above.

Pursuant to section § 71113 of the Public Resources Code (PRC), the IWG has developed recommendations to the Secretary of Cal/EPA for an agencywide strategy for identifying and addressing any gaps in existing programs, policies or activities that may impede the achievement of environmental justice. This strategy will be a guide for Cal/EPA's integration of environmental justice into its public health and environmental protection programs, policies and activities to ensure that all Californians are treated fairly with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Page 3

Please note that CCEEB also has concerns regarding terms used in the proposed language (e.g., "equal and full protection" and "full access"). Please see Comment 3 below regarding CCEEB's concerns about the use of certain terms throughout the document. CCEEB's suggested language above would address the concerns regarding terms for this paragraph.

Comment 3 – UNCLEAR TERMS: There are terms in the document that are different from the terms in the SB 89 statute and are unclear and problematic.

A. Background

The State's definition of environment justice (from Government Code Section 65040.12) is:

the **fair treatment** of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

The Legislature based the definition of "environmental justice" on fair treatment. CCEEB supports this definition.

B. Concerns

The Draft Proposal includes some undefined terms that are subject to multiple interpretations. In some instances different terms are used to express the same concept. These terms raise questions regarding how Cal/EPA, the BDOs and readers would interpret them. The terms in question are:

Set 1:

- 1) "equal and full protection"
(P. 1, Par. 2; P. 3, Par. 1; P. 4 Par. 1))
- 2) "same degree of protection"
(P. 3, Vision)
- 3) "full protection"
(P. 3, Mission)

Set 2:

- 4) "full access in a clean, healthy environment"
(P. 1, Par. 2; P. 3, Par. 1)
- 5) "equal access (...) in our decision making processes"
(P. 3, Vision)
- 6) "full access"
(P. 3, Mission, Values, Par. 1; P. 4, Par. 1)

Page 4

Set 3:

- 7) "equal implementation and enforcement."
(P. 5, Criterion III)

Following is a brief discussion to highlight the concerns.

- 1) "Equal Protection"/"Same Degree of Protection" – What does "equal protection" or "same degree of protection" mean in the context of Cal/EPA's programs? A reader might construe these terms to mean that every person in California should be exposed to the same level of air quality or water quality. Given factors such as differences in numbers between urban and rural populations, differing background concentrations, and differing meteorology, it is not possible for different areas in California to have the exact same protection from an exposure perspective. The key is that there needs to be fair treatment in how the standards and requirements are developed, implemented and enforced. The Legislature appropriately used the term "fair treatment."
- 2) "Full Protection" – What does "full protection" mean in the context of Cal/EPA's programs? California's environmental programs are based on the attainment of standards, objectives, and risk reduction and compliance with numerous regulatory requirements – as opposed to a zero risk or zero exposure program. Fair treatment should be evaluated in the context of the development, implementation and enforcement of these standards and requirements.
- 3) "Full Access"/"Equal Access (...) in Our Decision-Making Processes"/Full Access in a Clean, Healthy Environment" - What do these terms mean? We think that the general meaning here is intended to be full access in the decision-making processes. However, the use of "full access" without any context, the use of multiple terms, and the reference to "full access in a clean, healthy environment" makes the intended meaning unclear.
- 4) "Equal Implementation and Enforcement": What does this term mean in the context of Cal/EPA's programs? For example, if a department or board inspects nine facilities of ten facilities once in a year and inspects the tenth facility twice in the year because of violations, is that "unequal" enforcement? The statute calls for implementation and enforcement in a manner that ensures the fair treatment of all Californians.

The Legislature has appropriately used consistent terms in the environmental justice statutes, and we urge Cal/EPA to use the words chosen by the Legislature. We urge the IWG and Staff to revisit the choice of terminology. In some of the comments below, we have offered specific suggested language changes to address the concerns regarding terms.

Page 5

Comment 4 – SB 89 GAP IDENTIFICATION CRITERIA: CCEEB urges the IWG to:

- A) include criteria for each goal;**
- B) state the criteria as tests for identifying and addressing gaps (i.e., as questions);**
- C) consider the meaning of “environmental justice problem” in the context of applying the criteria in the gap identification process; and**
- D) modify the suggested language. [Page 5.]**

A. Background

Subdivision (c) of PRC Section 71113 requires the IWG to:

(c)(...)(2) Recommend criteria to the Secretary for Environmental Protection for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

In the discussions at the Legislature on SB 89, the criteria were intended to serve as objective tests for the Boards, Departments and Offices (“BDOs”) to use in determining if there was a gap in a BDO program that might impede the achievement of environmental justice.

In the Advisory Committee process, the Committee did not want to spend a lot of time on criteria but did include for each of the four goals in the Committee’s recommendations a set of “positive criteria” and a set of warning indicators or “negative” criteria. The positive criteria included a list of actions that a program would include if it successfully integrated the goal. The warning indicators were items that should be evaluated because, if present, they might indicate that a program had not successfully integrated the goal.

Staff is proposing the following five criteria under Goal 2:

- I. Consider environmental justice issues in developing and revising programs and program elements.
- II. Ensure that program and development and adoption processes do not create new, or worsen existing, environmental justice problems.
- III. Establish guidelines, procedures, and performance measures to ensure **fair and equal** implementation and enforcement of programs.
- IV. Collect and collaborate on data, tools, and procedures to identify existing environmental justice problems.
- V. Identify and prioritize actions that will address and/or reduce existing environmental justice problems. [Emphasis added.]

Page 6

These criteria are based on positive criteria that the Advisory Committee listed under Goal 2. (Where the highlighted words above are, the Committee used the word "equitable.")

B. CCEEB's Concerns with the Proposed SB 89 Criteria

Following are CCEEB's concerns with these suggested criteria.

- 1) The current proposal would only provide criteria under Goal 2. CCEEB suggests that the IWG develop and recommend criteria for **each of the four goals**.
- 2) We suggest that Cal/EPA write the criteria as tests (i.e., **in the form of a question**) to make the tests straightforward for a BDO to apply in the gap identification process. For example (using Staff's first suggested criterion):

Does the [BDO name] consider environmental justice issues in developing and revising programs and program elements?

- 3) The BDOs will need to be able to **apply** the criteria as objective tests to determine where there are EJ gaps. Suggested criteria II, IV, and V use the term "environmental justice problem." (We recognize that the words come from the Advisory Committee's report.) To apply such criteria in the process of identifying and addressing gaps, Cal/EPA and the BDOs will need to have determined what constitutes an "environmental justice problem." This area warrants a full discussion. We suggest that the focus under goal 2 should be on whether the program in question results in monitored exposures or cumulative health risks in a community that are unusually higher than the average monitored exposures or cumulative health risks in the relevant region.
- 4) As to the language in the current draft, suggested criterion III uses the term "fair and equal" implementation and enforcement of programs. Please see comment 3 regarding terminology. For example, what does "equal enforcement" mean? Does this mean that a BDO has to have the same number of inspections at every facility as opposed to being able to conduct routine inspections but also focus resources on problems (e.g., a facility with a pattern of serious violations)? We suggest using the Committee's language and turning it into a question:

Has the [BDO name] established guidelines, procedures and performance measures to ensure **equitable** implementation and enforcement?

Comment 5 – STATUTE: CCEEB supports Staff's inclusion of the IWG's statutory requirements in the Draft Proposal. [Pages 1 and 2.]

Page 7

At Pages 1 and 2 of the Draft Proposal, Staff has included in the background section the list of the IWG's requirements in the strategy development process. Inclusion of this information helps the reader to better understand the process for and purpose of the strategy. CCEEB supports inclusion of this information in the background section of the strategy.

Comment 6 – STUDIES: The addition of information regarding which environmental justice studies the IWG has reviewed would be helpful. [Page 2, Par. 1 and Page 4, Par. 2.]

At the first paragraph of Page 2, and at the second paragraph of Page 4, the Draft Proposal indicates that the IWG has examined existing data and studies on environmental justice. It would be informative for the strategy (or possibly a list in an appendix) to note the data and studies that the IWG has examined for this purpose.

Comment 7 – CORRECTION: The date for the Advisory Committee's report needs to be changed. [Page 2, Par. 2.]

In the second paragraph of Page 2, the Draft Proposal states:

On October 1, 2003, the Advisory Committee presented its report, The Recommendations of the Advisory Committee on Environmental Justice to the Interagency Working Group Report, advising the IWG on the issues, goals, and actions for development of the intra-agency environmental justice strategy.

The Committee voted to approve the report on September 30, 2003. However, the report was not complete until the Alternative Opinion was drafted and included. The official publication date of the report is October 7, 2003. Further, at the IWG's October 14, 2004 meeting, it was clear that the IWG was discussing the final version of the Committee's report which included the Alternative Opinion. We suggest that the IWG change the October 1, 2003 date to **October 7, 2003**.

Comment 8 – VISION: It is appropriate to include a vision statement. CCEEB suggests an alternative statement in order to address the concerns in Comment 3 regarding unclear terms. [Page 3.]

The current draft would state the following as Cal/EPA's Environmental Justice Vision:

All Californians regardless of race, culture, or income enjoy the same degree of protection from environmental and health hazards and equal access to and fair treatment in our decision-making processes.

Page 8

To address the concerns regarding terminology expressed in Comment 3, CCEEB suggests the following revised vision statement which is based more directly on the State's definition of "environmental justice" in Government Code Section 65040.12:

All Californians regardless of race, culture or income enjoy fair treatment with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Comment 9 – MISSION STATEMENT: CCEEB suggests an alternative mission statement in order to address the concerns in Comment 3 regarding unclear terms. [Page 3.]

The current draft includes the following suggested mission statement:

To accord the highest respect and value to every individual and community, Cal/EPA and its Boards, Departments and Offices (BDO[s]) shall conduct their public health and environmental protection programs, policies and activities in a manner that is designed to **promote equality and afford fair treatment, full access and full protection** to all Californians, including low income and minority populations.

As explained in Comment 3 above, the highlighted language raises questions regarding the meaning of the terms.

To address those concerns, CCEEB suggests the following modified version:

To accord the highest respect and value to every individual and community, Cal/EPA and its Boards, Departments and Offices (BDO[s]) shall **develop and** conduct their public health and environmental protection programs, policies and activities in a manner that is designed to **promote equality and afford** ensure the fair treatment, full access and full protection to **for** all Californians, including low income and minority populations.

CCEEB's suggested changes are based on subdivision (a) of PRC Section 71110:

71110. The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, shall do all of the following:

(a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state. (...)

Page 9

Comment 10 – VALUES: CCEEB suggests that Cal/EPA include in the environmental justice values section the values of “good science” and “regulatory certainty.” [Page 3.]

Staff has included a proposed environmental justice “values” section in the Draft Proposal, and inclusion of such a section is appropriate. CCEEB suggests that Cal/EPA add the values of “good science” and “regulatory certainty” to the list.

Using good science does not mean waiting for perfect science, but it does encompass the concept that environmental programs need to regulate based upon assessed exposures and risk as opposed to upon perception. As to regulatory certainty, it is important for both the communities and the businesses to be able to know what the environmental requirements are. In ARB’s Environmental Justice Policies and Actions document, ARB committed to following ARB’s science-based approach of evaluating public health impacts. ARB also acknowledged in that document the importance of regulatory certainty.

Comment 11 – GOALS: CCEEB supports inclusion of the four proposed goals. [Pages 4, 5 and 6.]

Staff is proposing to use the four goal statements from the Advisory Committee’s report to provide the “structure” for a good part of the strategy document. CCEEB supports the inclusion of the four proposed goals in this manner.

Comment 12 – PRECAUTION: CCEEB supports the use of the term “precautionary approach.” [Page 6, Goal 2, Objective E.]

At Page 3, Staff lists the following as a draft objective under Goal 2:

Identify where a precautionary approach is currently being used, or could be used, that addresses environmental justice issues.

In the Advisory Committee’s process, there was extensive debate regarding whether the Committee should recommend that Cal/EPA apply the “precautionary principle” (e.g., the Wingspread Statement). Because of concerns raised by some members of the public and some members of the Committee regarding the “precautionary principle,” the Committee decided not to include the precautionary principle as one of its recommendations. During these discussions, CCEEB noted that Cal/EPA uses a precautionary approach in its programs (e.g., the State ozone standard is more restrictive than U.S. EPA’s ozone standard and OEHHA’s risk assessment guidance is more conservative than U.S. EPA’s risk assessment guidance), and that it would be appropriate to have an identification of where Cal/EPA uses a precautionary approach and where additional precaution is needed. Accordingly, CCEEB supports the proposed objective.

Page 10

Comment 13 – CUMULATIVE IMPACTS TOOLS: CCEEB suggests clarification of the objective regarding tools to assess cumulative impacts. [Page 6, Goal 3, Objective B.]

At Page 6, under goal 3, Staff is suggesting the following objective:

Develop tools and approaches to assess and reduce adverse cumulative impacts.

CCEEB suggests that the IWG consider amending this proposed objective to include the concepts that: A) the tools and approaches would be science-based and peer-reviewed; and 2) there would be objective and equitable criteria for the use of the tools. The Advisory Committee's recommendation reads as follows:

Develop, through a public process, peer-reviewed tools to assess cumulative impacts, and equitable scientifically based criteria for use of these tools, especially as they may be used to further the goals of environmental justice.

One way to amend the Staff's draft objective would be as follows:

Develop scientifically-based and peer-reviewed tools, objective criteria and equitable approaches to assess and reduce adverse cumulative impacts.

Comment 14 – JOBS AND BUSINESS CLIMATE: What is missing from the document is an acknowledgment that the development of solutions to environmental justice problems needs to take into account impacts on the creation and retention of jobs and business climate.

CCEEB recognizes that the central focus of Cal/EPA's environmental justice program needs to be the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations, and policies (consistent with the State's definition of "environmental justice at Section 65040.12 of the Government Code). However, what is completely missing from this document is an acknowledgment that different types of solutions can have unintended negative impacts on the creation and retention of jobs and business climate in California. Given that jobs creation is important to public health, we suggest that Cal/EPA note in the document that it is important for the BDOs to take into account the cost-effectiveness of measures and the impact on jobs retention and creation and business climate when developing solutions.

Page 11

3. **CLOSING**

CCEEB appreciates Cal/EPA's and the IWG's consideration of these comments. If you have any questions, or if you would like to discuss the comments, please contact Cindy Tuck at (916) 442-4249.